

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:02-CR-00133-F-1

No. 7:12-CV-00131-F

JAMES PHILLIP LOWERY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

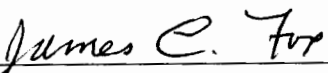
This matter is before the court on the Memorandum and Recommendation (“M&R”) [DE-37, DE-38] of United States Magistrate Judge Kimberly A. Swank, regarding Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-27]. Any objections to the Magistrate Judge’s M&R were due on March 11, 2014.¹

Upon careful review of the M&R and of the record generally, and having found no clear error, the court hereby ADOPTS the recommendation of the Magistrate Judge as its own, and for the reasons stated therein, the Government’s Motions to Dismiss [DE-31, DE-34] are DENIED, Petitioner’s § 2255 motion [DE-27] is ALLOWED, and the court’s judgment entered July 7, 2003 hereby is VACATED. The court has reviewed the arguments raised, and in light of the applicable standard, a certificate of appealability is DENIED.

SO ORDERED.

¹On March 6, 2014, the Government filed a motion for extension of time to file objections. [DE-40, DE-41.] The Government’s objections are due by April 1, 2014, but the Government has advised the court they do not intend to file any objections.

This, the 28th day of March, 2014.



JAMES C. FOX
Senior United States District Judge